Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: PA/11171/2018
PA/10646/2018
PA/04150/2018

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
On 17 October 2019	**On 13 November 2019**

Before

UPPER TRIBUNAL JUDGE GRUBB
DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

LAQG
GMMR
EDMF
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Ms M Bayoumi, instructed by Asylum Justice
For the Respondent: Mr C Howells, Home Office Presenting Officer

DECISION AND REASONS

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the

appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Introduction

This decision concerns the consolidated appeals of a family from El Salvador. Although the appeals of the first and second appellant were heard separately in the First-tier Tribunal from that of the third appellant, all the appeals have been listed together before us, permission having been granted in the separate appeal proceedings, since the claims arise out of a common factual matrix and the issues which we have to decide, as will become clear shortly, impact upon both sets of proceedings.

Background

The first appellant is a citizen of El Salvador who was born on 29 June 1962. In his appeal, his long-term partner ("BL") is a dependant.

The second appellant is also a citizen of El Salvador who was born on 1 October 1972. She is the mother of the third appellant, also a citizen of El Salvador, who was born on 10 June 1992.

The third appellant is married to the daughter ("DD") of the first appellant and his partner.

The third appellant and DD have a son ("AD") who is also a citizen of El Salvador.

The appellants' claims arise out of a fear of a gang known as "Barrio 18" and, in particular, their leader, who is known as "Killer".

They claim that "Killer" became infatuated with DD whilst she was a schoolgirl. When his advances were rejected, difficulties with the gang forced the family to relocate within El Salvador and they remained free from difficulty for some years.

However, they claim that the gang found out where they had moved and they experienced a number of incidents which led to them leaving El Salvador. AD, the child of the third appellant and DD, was kidnapped by the gang although he was subsequently released. The third appellant was attacked by members of the gang at his work and severely beaten. DD was raped by a member of the gang, at her workplace, in the presence of her mother and son. Whilst he was on a bus, the first appellant, in fear of armed gang members who came on the bus, was forced to leave. In another incident, the first appellant's partner was riding on a bus when it was shot at by men from a motorbike. Finally, members of a rival gang ("MS 18") came to the third appellant's house and put a gun in DD's mouth and told them that they did not want to see them or their family in the area because of their involvement with the rival gang Barrio 18.

As a result of these events, the appellants and their family members left El Salvador.

The third appellant together with DD and AD arrived in the United Kingdom on 15 November 2017 and the third appellant claimed asylum.

The first appellant, his partner and the second appellant came to the UK on 28 February 2018 and claimed asylum.

The third appellant's claim (together with those of DD and AD as his dependants) was refused by the Secretary of State on 7 March 2018.

The claims of the first appellant (and his dependent partner) were refused by the Secretary of State on 10 August 2018 and the claim of the second appellant was refused on 4 August 2018.

The Appeals

The appeal of the third appellant was heard first by the First-tier Tribunal on 24 July 2018. In a determination promulgated on 7 August 2018, Judge Trevaskis dismissed the appeal on all grounds. He made an adverse credibility finding and rejected the third appellant's claim that he was at risk on return to El Salvador from gang members.

Permission to appeal was refused by the First-tier Tribunal (DJ Peart) on 5 September 2018. Initially permission was also refused by the Upper Tribunal (UTJ Coker) on 5 April 2019. However, subsequently UTJ Coker reconsidered her decision on the basis that, due to a procedural error, further and additional grounds submitted by the third appellant had not been made available to her when she refused permission. Having set aside her earlier decision, on 6 August 2019 UTJ Coker granted the third appellant permission to appeal.

The appeals of the first appellant (together with his partner as dependant) and the second appellant were separately listed and heard by the First-tier Tribunal on 11 February 2019. In a decision sent on 11 March 2019, Judge Solly dismissed their appeals on all grounds. Before Judge Solly, the Secretary of State relied upon the adverse findings of Judge Trevaskis in the appeal of the third appellant. Judge Solly also made adverse credibility findings and dismissed the appeals of the first appellant (and that of his partner as dependant) and the second appellant.

On 7 May 2019, the First-tier Tribunal (Judge Haria) granted the first and second appellants permission to appeal.

The appeals of the first and second appellants was initially listed before the Upper Tribunal in July 2019. However, at the hearing before DUTJ Phillips he was told that the application had been made to the Upper Tribunal for UTJ Coker to reconsider her refusal of permission on 5 April 2019. As that appeal was closely allied to the appeal of the first and second appellants, DUTJ Phillips adjourned the appeal of the first and second appellants so that, if permission were granted to the first appellant to appeal, all the appeals could be considered together by the UT.

In the event, as we have pointed out, UTJ Coker did reverse her decision and granted the third appellant permission to appeal on 6 August 2019.

As a result, the appeals of all the appellants were listed before us on 17 October 2019.

At the outset of the hearing, Mr Howells accepted that if the decision of Judge Trevaskis was set aside, so should the decision of Judge Solly as she had taken into account, applying Devaseelan, his adverse credibility findings. He conceded that if Judge Trevaskis' adverse credibility findings were flawed in law, the appeals of all three appellants should be reheard in the First-tier Tribunal *de novo*.

As a consequence, we heard submissions focussed upon the appellants' challenge to Judge Trevaskis' decision. At the conclusion of the parties' respective submissions, and having taken time to consider those submissions, we indicated that Judge Trevaskis' decision was legally flawed and could not stand.

As a result of Mr Howells's concession, it was unnecessary to hear any submissions in relation to Judge Solly's decision, which could not, in the light of our conclusion in respect of Judge Trevaskis' decision, stand.

At the conclusion of the hearing, we indicated that the decisions of both Judges Trevaskis and Solly were set aside and the appeals would be remitted to the First-tier Tribunal in order to remake the decisions in respect of all three appellants at a consolidated hearing.

We now give our reasons for our conclusions.

The Submissions

Ms Bayoumi relied upon two sets of grounds of appeal at pages 241 – 247 and 266 – 270 of the consolidated bundle in respect of the third appellant. In particular, she relied upon the latter "supplemental grounds of appeal".

First, Ms Bayoumi submitted that the judge had fallen into error in [59] when he had stated that there was not "any medical evidence corroborating injuries suffered by the [third] appellant or [his wife]". She submitted that there were copies of the medical records of the third appellant and his wife, DD, which, as set out in para 10 of the "supplemental grounds of appeal", set out the claim and, consistent with that claim, supporting medical conditions of both the third appellant and DD.

In response, Mr Howells submitted that the medical reports did not provide medical evidence "corroborating" the claimed injuries. The evidence was simply of what the third appellant and his wife told their GP. He submitted that the reasoning of Judge Trevaskis, in particular at para [60], was that the third appellant had not mentioned a number of the incidents in his screening interview. What he had said to the GP postdated that. Mr Howells pointed out

that the screening interview was on 15 November 2017 and the date of the earliest medical record was 24 November 2017.

In response, Ms Bayoumi submitted that it was speculative that that was all that Judge Trevaskis had in mind in [59], namely that there was nothing in the medical records to corroborate the "injuries" as opposed to the third appellant's claim. She submitted that there needed to be a holistic assessment including taking into account the evidence of the third appellant and DD as given to the GP. Consistency was, she submitted, an important aspect of assessing credibility.

Secondly, Ms Bayoumi submitted that the judge had failed to take into account the background evidence concerning gang violence in El Salvador to which he had been referred by the third appellant's (then) Counsel.

In response, Mr Howells submitted that the judge had stated at [43] that he had had regard to "all of the evidence contained in the bundles". Mr Howells pointed out that at [62] the judge had referred to the "background information about San Salvador" in finding an aspect of the third appellant's account plausible. He submitted it was not correct, therefore, that the judge had not considered the background evidence.

Thirdly, Ms Bayoumi submitted that the judge had made a number of factual errors concerning the evidence in his determination. In particular, she relied upon the following. First, at [11] the judge had been wrong to say that the third appellant's wife (DD) had been "raped at her salon by two members of Barrio 18". Her evidence was that she had been raped by the gang leader and the incident had been watched by two other gang members. Secondly, in relation to the attack upon the bus when shots were fired from a passing motorbike, the judge had been wrong at [11] to state that the third appellant's wife and her mother had been "shot at by members of Barrio 18" and that at [31] the judge took into account that the third appellant had been unable to give details of the motorbike attack on his wife. However, it had not been the evidence before the judge that the appellant's wife had been on the bus. Rather, her parents and his mother (the second appellant) had been on the bus when it was attacked. Further, at [60], the judge criticised the third appellant for not mentioning this attack, together with a number of other incidents, in his screening interview, which damaged his credibility.

In response, Mr Howells accepted that there was some confusion in Judge Trevaskis' understanding of the 'motorbike incident'. He also accepted that the judge had made an error at [11] in relation to the detail of the sexual violence against the third appellant's wife, DD. As regards the latter, Mr Howells submitted it was not material as the judge had not taken this into account in assessing the third appellant's credibility. As regards the 'motorbike incident', Mr Howells submitted that it remained the case that the third appellant had not mentioned that incident, together with a number of other significant incidents, in his screening interview and the judge was entitled to take that into account at [60] in reaching his adverse credibility finding.

When we raised the point with him, Mr Howells accepted that the judge in [63] had been wrong to doubt the appellant's account of when he was on a bus and it was boarded by two gang members and his evidence that his fear was based upon "instinct alone". Mr Howells accepted that the third appellant's evidence was that he had seen armed individuals board the bus and that, therefore, the judge's reasoning that, in effect, the appellant's account that he would leave the bus (together with others) in fear was implausible.

Discussion

Judge Trevaskis' reasoning, that led him to reach his adverse credibility finding, is set out at [59] – [64] as follows:

> "59. I have considered the inconsistencies identified by the respondent in the reasons for refusal, and the explanations offered by the appellant. In the absence of any record of reports of the alleged incidents to the authorities, or any medical evidence corroborating injuries suffered by the appellant or his wife, or any statements from other family members, credibility of the claims can only be assessed on the basis of the accounts given by the appellant and his wife at the various stages of the claim, namely screening interview, asylum interview and appeal hearing.
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> 60. It is a common argument that the structure of the screening interview is such that a detailed account is at best unwanted and at worst discouraged. The appellant said that he did not mention the kidnap of his child because he was told to explain why he could not return; he did not mention being beaten because there was not enough time; he did not mention the attack by men on a motorbike because he had not been present; he did not mention that his wife had been threatened and a gun put in her mouth, nor that she had been raped, because he did not know those details at the time of his screening interview. These details constitute a significant proportion of the narrative of the appellant's claims, and, because of that and because of the seriousness of the incidents themselves, I do not consider that the explanation offered by the appellant for the omission of these details at his first opportunity to explain his reasons for flight is sufficient to satisfy me the required standard as to the credibility of those claims.
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> 61. He was asked in his screening interview whether he or his wife had any association with gang members, and said no. He explains that he did not consider what happened to his wife to constitute an 'association'. I am prepared to accept that that misunderstanding would explain the apparent inconsistency.
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> 62. The appellant stated that, after the kidnap of his son, when he was reunited with his wife, son and mother-in-law, he decided to send them home in a taxi, rather than taking them himself, because he feared losing his job. He also suggested that taxis were a safer means of transport than buses. Having regard to the background information about San Salvador, I am prepared to accept that this is a plausible explanation for that course of action. Presumably, travel by taxi would have been faster than by bus, and would have reduced their exposure to contact with other people.
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> 63. The account given by the appellant of the attacks upon him at work and on a bus were also considered to be lacking in consistency. Despite claiming to have suffered significant injuries in the attack at work, he did

> not seek medical treatment. With regard to the incident on the bus, there was no contact between him and his alleged assailants, and he based his fear of them upon instinct alone. I am not satisfied to the required standard that the appellant has provided a credible account of either of these alleged incidents.
>
> 64. Taking the account by the appellant in the round, and having regard to the above findings as to consistency and general credibility, I am not satisfied to the required standard that the appellant has established a credible subjective basis for fear of treatment amounting to persecution."

As will be clear from these paragraphs, only [59], [60] and [63] consist of reasons supporting an *adverse* credibility finding. By contrast, in [61] the judge accepted the "apparent inconsistency" and rejected the point relied upon by the Secretary of State. Likewise, in [62] the judge accepted that the appellant had provided a credible account of a number of matters relied upon by the Secretary of State.

First, whilst we see some merit in Mr Howells' submission that the medical records do not, in themselves, provide corroborating evidence of the third appellant's and DD's "injuries", the medical records do contain evidence from the third appellant and DD as to what they claimed happened to them (and their family) in El Salvador. That was relevant evidence, at least of consistency subsequent to the screening interview. The judge was wrong not to take that into account, particularly given that the 'heavy lifting' in his reasoning is at [59] – [60], that the third appellant had not mentioned significant incidents relevant to the claim at his screening interview on 15 November 2017, shortly before the earliest of the medical records, which, we were told by Mr Howells, was 24 November 2017.

Secondly, we have no doubt that the judge placed an unreasonable weight upon the fact that the third appellant had not mentioned the matter set out in [60] at his screening interview. We were told by Mr Howells that the screening interview, which took place at the airport on arrival, lasted 45 minutes. As the judge pointed out in [60], a screening interview is not the place for an individual to give a "detailed account" which, he recognised, is "at best unwanted and at worst discouraged". Nevertheless, the judge went on to take into account details in the third appellant's claim which were not mentioned at the screening interview.

Given the nature of a screening interview, caution must be exercised in counting against an appellant a failure to refer to a "detail" of an account rather than, perhaps, a fundamental basis of a claim – for example, stating a claim is based upon political opinion when subsequently the individual relies on other distinct reasons such as sexual orientation or religious beliefs (see R v SSHD ex p Agbonmenio [1996] Imm AR 69).

In JA (Afghanistan) v SSHD [2014] EWCA Civ 450, Moore-Bick LJ (with whom Gloster and Vos LJJ agreed) made this general point at [25]: a Tribunal must

> "consider with care the extent to which reliance can properly be placed on answers given by the appellant in his initial and screening interviews".

Here, in our judgment, the judge placed excessive and unreasonable weight upon the matters referred to in [60] as not being referred to in the third appellant's initial 45 minutes screening interview held shortly after he arrived at the airport.

In truth, apart from the matters referred to in [63], this was the only basis upon which the judge found the appellant's account not to be credible. Mr Howells accepted that one of the reasons given by the judge in [63] is not sustainable, namely that it was, in effect, implausible that the third appellant would leave the bus when it was boarded by two individuals because he was in fear based upon his "instinct alone". As we explored at the hearing, the third appellant's evidence was that he witnessed two armed men boarding the bus and he and others left as a result. We agree with Mr Howells that that reasoning in [63] is unsustainable in law.

Whilst Mr Howells may well be correct that the judge's mistaken understanding of the incident when it is claimed that the third appellant's wife (DD) was raped as set out in [11] was not material to his findings, when taken with his clear misunderstanding as to the incident when the third appellant's parents and mother-in-law were in a bus that was shot at from a motorbike, our confidence in the judge's grasp of the evidence is necessarily diminished.

In addition, we are left in some doubt as to what the judge meant when he accepted the "inconsistencies identified by the respondent in the reasons for refusal" (at [59]) when he subsequently relied, almost entirely, upon the third appellant's omission to mention certain details of the claim in the screening interview and rejected reliance upon certain inconsistencies that had been relied upon by the Secretary of State (see [61]). What, if any, other inconsistencies informed the bedrock of the judge's adverse finding are not possible to identify.

It is clear to us that the third appellant's claim (set in the context of the claims by the family as a whole) was a factually complex one. The judge's reasons at [59] – [64], so far as they are directed to his adverse credible finding, are sparingly brief. For the reasons we have given, essentially accepting the substance of Ms Bayoumi's first and third submissions, we are satisfied that the judge's decision was legally flawed and cannot, as a consequence, stand. It is unnecessary to express any concluded view on her second submission other than to say, in our view, we place no reliance on it in reaching a decision on the proper disposal of these appeals.

The appeal of the third appellant must, as a consequence, be remitted to the First-tier Tribunal for a *de novo* rehearing.

As we have already indicated, if that was our conclusion, Mr Howells conceded that Judge Solly's decision dismissing the appeals of the first and second appellants also could not stand because she had taken Judge Trevaskis' findings as a 'starting point' applying Devaseelan.

Accordingly, the decision of Judge Solly to dismiss the appeals of the first and second appellants cannot stand and must, likewise, be remitted to the First-tier Tribunal for a *de novo* rehearing.

Decision

The decision of Judge Trevaskis to dismiss the third appellant's appeal involved the making of an error of law and is set aside.

The decision of Judge Solly to dismiss the appeals of the first and second appellants involved the making of an error of law and is set aside.

The appeals of all three appellants are remitted to the First-tier Tribunal in order to be remade *de novo*. Those appeals should be consolidated and heard by a single judge other than Judges Trevaskis and Solly.

Signed

A Grubb
Judge of the Upper Tribunal

12 November 2019